

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

In Re: *Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and ITC^DeltaCom.*

Docket No. 02-01203

DEC 5 PM 4 01
TN REGULATORY AUTHORITY
DOCKET ROOM

**ANSWER AND COUNTER-COMPLAINT OF ITC^DELTACOM
COMMUNICATIONS, INC.**

ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"), hereby files this Answer and Counter Complaint in response to the above-captioned complaint filed by BellSouth Telecommunications, Inc. ("BellSouth") on November 5, 2002.

BACKGROUND

Pursuant to an Order of the FCC,¹ competing local exchange carriers ("CLECs") may convert a special access circuit, which is used, among other things, to carry long distance traffic between the customer's premise and the customer's long distance carrier, to a less expensive, loop and transport combination (typically called an "extended enhanced loop" or "EEL"), which is typically used to carry both local and long distance traffic. At the time of the conversion request, a CLEC must certify to BellSouth that the EEL will be used for a "significant amount" of local telephone service. The FCC has defined a "significant amount" in several ways. For example, under one definition, it will be presumed that there is "significant" local traffic on a CLEC-provided EEL if the customer served by the EEL has no other local service provider.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Docket No. 96-98, Supplemental Order Clarification, FCC 00-183, 15 FCC Rcd 9587 (released June 2, 2000) ("Supplemental order Clarification"). This Order is also the basis for the audit provisions contained in the parties' interconnection agreement. A copy of the relevant paragraphs of the Order is attached.

Recognizing that an incumbent local exchange carrier such as BellSouth should be able to verify that the converted EEL is carrying sufficient local traffic to meet the FCC's requirements, the FCC allows the incumbents to conduct "limited" audits. Concerned that the audit not be a burden on small CLECs, the FCC said that such an audit request may only be made once a year and "should not impose an undue financial burden" on the CLEC. Furthermore, the FCC stated that an incumbent carrier should not be able to require an audit of a CLEC unless the incumbent had a demonstrable "concern" that traffic on a converted EEL did not meet one of the FCC's definitions of "significant" local traffic. The Order states:

The incumbent LEC and competitive LEC signatories [which included BellSouth] to the *February 28, 2000 Joint Letter* state that audits will not be routine practice, but will only be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange service. *February 28, 2000 Joint Letter* at 3. We agree that this should be the only time that an incumbent LEC should request an audit.

To monitor the impact of this requirement, the FCC required incumbents to file copies of all audit requests at the Commission.

Based on the FCC's Order, the parties interconnection agreement also gives BellSouth the right to hire an "independent" auditor to audit converted EELs "to the extent reasonably necessary" to insure compliance with the FCC's guidelines.

This complaint arises from BellSouth's attempt to audit, not just the converted EELs, but all EELs ordered by ITC^DeltaCom in Tennessee. It is ITC^DeltaCom's contention that the audit request is overbroad, that BellSouth has no reasonable basis to request an audit, and that BellSouth's chosen auditor, a firm comprised of former

employees of incumbent carriers, is not "independent." Furthermore, as BellSouth is presumably aware, ITC^DeltaCom has only one EEL in Tennessee that was converted from a special access circuit. Attached to this Answer is a statement from that customer explaining that ITC^DeltaCom is the customer's sole provider of local service.

For these reasons, ITC^DeltaCom believes that BellSouth's audit request is inconsistent with the FCC's Order and the parties interconnection agreement. Given the fact that ITC^DeltaCom has only one converted EEL in Tennessee, the audit request serves no purpose other than to impose a financial burden on ITC^DeltaCom, just as the FCC had feared might occur. ITC^DeltaCom therefore asks that the complaint be dismissed and that, in the future, BellSouth be required to seek TRA approval before making such audit demands.

ANSWER

ITC^DeltaCom makes the following specific response to the allegations in the Complaint:

1. Admitted.
2. Admitted.
3. No response required.
4. Admitted; ITC^DeltaCom's representatives for purposes of this proceeding are:

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Boult, Cummings, Conners & Berry, PLC
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Ph. 615-252-2363

Nanette Edwards
ITC^DeltaCom
4092 South Memorial Parkway
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Ph. 256-382-3856

5. Admitted.
6. Admitted in part; denied in part. ITC^DeltaCom has attempted to resolve this matter informally, but has been unable to do so because BellSouth has refused to abide by the requirements of the FCC's "Supplemental Order Clarification"² and the audit provisions of the parties interconnection agreement..
7. Admitted.
8. Admitted.
9. Denied. Section 8.3.5 of the parties' Interconnection Agreement (copy attached) does not give Bell unfettered discretion to conduct an audit of ITC^DeltaCom's use of EELs. Section 8.3.5.3 provides for the audit of converted circuits, not all circuits, and only "to the extent reasonably necessary." Moreover, the audit provision must also be read in light of the FCC Order on which it is based. The Order requires BellSouth to articulate an objective "concern" which would justify an audit.
10. Admitted in part, denied in part. BellSouth has demanded an audit of all EELs, but the audit provision in the agreement applies only to EELs that were initially purchased as special access facilities, then subsequently converted to EELs.

² See Footnote 1, *supra*.

11. Admitted in part, denied in part. BellSouth demanded and audit of ITC^DeltaCom's records, and ITC^DeltaCom responded with a request that BellSouth provide a reason for the audit and for information related to the auditor selected by BellSouth.. Additionally, ITC^DeltaCom requested that BellSouth confirm that the scope of the audit was limited to only those special access circuits that had been converted to EELs.

12. Denied. Section 8.3.5 entitled "Special Access Service Conversions," clearly provides that the only facilities subject to the audit provision are those that were purchased as special access facilities, then subsequently converted to EELs. Additionally, the interconnection agreement requires that the auditor be an independent third party.

13. Denied. ITC^DeltaCom asks only that BellSouth demonstrate an objective "concern" to justify the audit.

14. Denied. Both the agreement and the FCC's Order require that the auditor be "independent." It is our ITC^ DeltaCom's understanding that the firm selected by BellSouth works only for ILECs.

15. Denied. The audit provision of ITC^DeltaCom's Interconnection Agreement and, more importantly, the facts presented here are not the same as those in the NuVox case in Georgia. Moreover, the Hearing Officer's decision in that case is not a final Georgia Commission order and is currently subject to an application to modify or reverse that will be considered by the full Georgia Commission. Even assuming the

Hearing Officer's decision on that case was well founded, this simply is not the same set of circumstances.

16. Denied. The parties' rights are clear from the language of the interconnection agreement and the FCC's Order.

COUNTER-COMPLAINT

ALLEGATIONS

1. The statements regarding the identification of Parties and Jurisdiction set forth in BellSouth's Complaint, as modified in ITC^DeltaCom's answer, are incorporated by reference as if stated herein.

2. ITC^DeltaCom and BellSouth are parties to an interconnection agreement, now in effect, which has been approved by the TRA.

3. Section 8.3.5 of the agreement provides for the audit of converted EELs by an independent auditor, "to the extent reasonably necessary" to ensure compliance with the terms and conditions set forth for such conversions.

4. On May 23, 2002, BellSouth sent a letter to ITC^DeltaCom demanding an immediate audit of all EELs, new and converted, purchased from BellSouth by any and all ITC^DeltaCom affiliates.

5. As of December 5, 2002, ITC^DeltaCom is currently paying BellSouth for approximately fifty or less EELs in Tennessee. Based on the Purchase Order Numbers ("PONs"), ITC^DeltaCom has identified only one EEL which was converted from a special access circuit.

6. The one EEL in Tennessee which was converted from special access is being used to serve a customer who has selected ITC^DeltaCom as the customer's exclusive provider of local service. A statement from the customer is attached.

7. BellSouth has refused to abide by the terms of the parties' interconnection agreement and the terms of the FCC's Order, which seeks to prevent a large incumbent provider from doing exactly what BellSouth seeks to do: further burden the internal resources of CLECs with overly broad, unsubstantiated audit demands.

WHEREFORE, ITC^DeltaCom requests that the Authority:

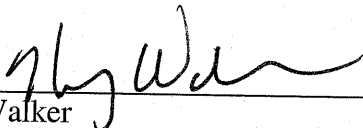
1. Dismiss or deny BellSouth's complaint and all of the relief sought therein;
2. Enter an order declaring that BellSouth has breached its interconnection agreement with ITC^DeltaCom by failing to comply in good faith with the audit provisions thereof;
3. Enter an order appropriately confirming the limits of the audit rights granted in Section 8.3.5 and requiring BellSouth to present list of specific converted circuits it seeks to audit and a reasonable basis for the audit of each of the specific converted EELs ;
4. Enter an order requiring BellSouth to cease and desist the anticompetitive practice of demanding broad, sweeping audits without proper justification therefore, and requiring BellSouth to provide notice to this Authority of any future audit demands served upon any CLEC in Tennessee; and

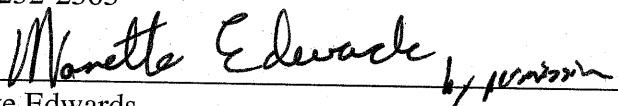
5. Grant ITC^DeltaCom such other and further relief as the Authority deems fair and equitable.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____


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Dated this 5th day of December, 2002.

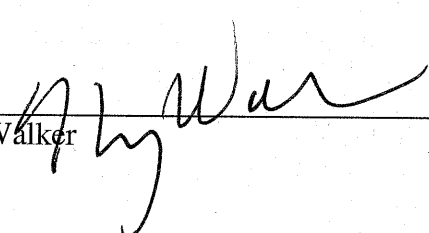
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 5th day of December, 2002.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

R. Douglas Lackey, Esq.
675 Peachtree St., NE, Suite 4300
Atlanta, GA 30375

Henry Walker



ATTACHMENT

Attachment 2
Page 20

60 days after the Effective Date of this Agreement and negotiate final language on this issue and if not resolved, the Parties shall petition the Commission for resolution. In the interim, ITC^DeltaCom shall submit and BellSouth shall provision combinations pursuant to BellSouth's definition of "currently combined."

8.3 EELs

8.3.1 Where facilities permit and where necessary to comply with an effective FCC and/or State Commission order, or as otherwise mutually agreed by the Parties, BellSouth shall offer access to loop and transport combinations, also known as the Enhanced Extended Link ("EEL") as defined in Section 8.3.2 below.

8.3.2 Subject to Section 8.3.3 below, BellSouth will provide access to the EEL in the combinations set forth in Section 8.3.4 following. This offering is intended to provide connectivity from an end user's location through that end user's SWC to ITC^DeltaCom's POP serving wire center. The channels on the circuit sufficient to meet the local usage options described in Section 8.3.5 below, must be connected to ITC^DeltaCom's switch for the purpose of provisioning telephone exchange service to ITC^DeltaCom's end-user customers. The EEL will be connected to ITC^DeltaCom's facilities in ITC^DeltaCom's collocation space at the POP SWC, or ITC^DeltaCom may purchase BellSouth's access facilities between ITC^DeltaCom's POP and ITC^DeltaCom's collocation space at the POP SWC.

8.3.3 BellSouth shall provide EEL combinations to ITC^DeltaCom in Georgia regardless of whether or not such EELs are Currently Combined. In all other states, BellSouth shall make available to ITC^DeltaCom those EEL combinations described in Section 8.3.4 below only to the extent such combinations are Currently Combined. Furthermore, BellSouth will make available EEL combinations to ITC^DeltaCom in density Zone 1, as defined in 47 C.F.R. 69.123 as of January 1, 1999, in the Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA, MSAs regardless of whether or not such EELs are Currently Combined. Except as stated above, EELs will be provided to ITC^DeltaCom only to the extent such network elements are Currently Combined.

8.3.4 EEL Combinations

8.3.4.1 DS1 Interoffice Channel + DS1 Channelization + 2-wire VG Local Loop

8.3.4.2 DS1 Interoffice Channel + DS1 Channelization + 4-wire VG Local Loop

8.3.4.3 DS1 Interoffice Channel + DS1 Channelization + 2-wire ISDN Local Loop

8.3.4.4 DS1 Interoffice Channel + DS1 Channelization + 4-wire 56 kbps Local Loop

Tennessee

Attachment 2

Page 21

- 8.3.4.5 DS1 Interoffice Channel + DS1 Channelization + 4-wire 64 kbps Local Loop
- 8.3.4.6 DS1 Interoffice Channel + DS1 Local Loop
- 8.3.4.7 DS3 Interoffice Channel + DS3 Local Loop
- 8.3.4.8 STS-1 Interoffice Channel + STS-1 Local Loop
- 8.3.4.9 DS3 Interoffice Channel + DS3 Channelization + DS1 Local Loop
- 8.3.4.10 STS-1 Interoffice Channel + DS3 Channelization + DS1 Local Loop
- 8.3.4.11 2-wire VG Interoffice Channel + 2-wire VG Local Loop
- 8.3.4.12 4-wire VG Interoffice Channel + 4-wire VG Local Loop
- 8.3.4.13 4-wire 56 kbps Interoffice Channel + 4-wire 56 kbps Local Loop
- 8.3.4.14 4-wire 64 kbps Interoffice Channel + 4-wire 64 kbps Local Loop
- 8.3.5 Special Access Service Conversions
- 8.3.5.1 ITC^DeltaCom may not convert special access services to combinations of loop and transport network elements, whether or not ITC^DeltaCom self-provides its entrance facilities (or obtains entrance facilities from a third party), unless ITC^DeltaCom uses the combination to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer. To the extent ITC^DeltaCom requests to convert any special access services to combinations of loop and transport network elements at UNE prices, ITC^DeltaCom shall provide to BellSouth a letter certifying that ITC^DeltaCom is providing a significant amount of local exchange service (as described in this Section) over such combinations. The certification letter shall also indicate under what local usage option ITC^DeltaCom seeks to qualify for conversion of special access circuits. ITC^DeltaCom shall be deemed to be providing a significant amount of local exchange service over such combinations if one of the following options is met:
 - 8.3.5.1.1 ITC^DeltaCom certifies that it is the exclusive provider of an end user's local exchange service. The loop-transport combinations must terminate at ITC^DeltaCom's collocation arrangement in at least one BellSouth central office. This option does not allow loop-transport combinations to be connected to BellSouth's tariffed services. Under this option, ITC^DeltaCom is the end user's only local service provider, and thus, is providing more than a significant amount of local exchange service. ITC^DeltaCom can then use the loop-transport combinations that serve the end user to carry any type of traffic, including using them to carry 100 percent interstate access traffic; or

Tennessee

Attachment 2

Page 22

- 8.3.5.1.2 ITC^DeltaCom certifies that it provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer local dialtone lines; and for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic. When a loop-transport combination includes multiplexing, each of the individual DS1 circuits must meet this criteria. The loop-transport combination must terminate at ITC^DeltaCom's collocation arrangement in at least one BellSouth central office. This option does not allow loop-transport combinations to be connected to BellSouth tariffed services; or
- 8.3.5.1.3 ITC^DeltaCom certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dial-tone service and at least 50 percent of the traffic on each of these local dial-tone channels is local voice traffic, and that the entire loop facility has at least 33 percent local voice traffic. When a loop-transport combination includes multiplexing, each of the individual DS1 circuits must meet this criteria. This option does not allow loop-transport combinations to be connected to BellSouth's tariffed services. Under this option, collocation is not required. ITC^DeltaCom does not need to provide a defined portion of the end user's local service, but the active channels on any loop-transport combination, and the entire facility, must carry the amount of local exchange traffic specified in this option.
- 8.3.5.2 In addition, there may be extraordinary circumstances where ITC^DeltaCom is providing a significant amount of local exchange service, but does not qualify under any of the three options set forth in Section 8.3.5.1.1, 8.3.5.1.2, 8.3.5.1.3. In such case, ITC^DeltaCom may petition the FCC for a waiver of the local usage options set forth in the June 2, 2000 Order. If a waiver is granted, the Parties shall amend this Agreement within 45 days of ITC^DeltaCom's request to the extent necessary to incorporate the terms of such waiver.
- 8.3.5.3 BellSouth may audit ITC^DeltaCom records to the extent reasonably necessary in order to verify the type of traffic being transmitted over combinations of loop and transport network elements. The audit shall be conducted by a third party independent auditor, and ITC^DeltaCom shall be given thirty days written notice of scheduled audit. Such audit shall occur no more than one time in a calendar year, unless results of an audit find noncompliance with the significant amount of local exchange service requirement. In the event of noncompliance, ITC^DeltaCom shall reimburse BellSouth for the cost of the audit. If, based on its audits, BellSouth concludes that ITC^DeltaCom is not providing a significant amount of local exchange traffic over the combinations of loop and transport network elements, BellSouth may file a complaint with the appropriate Commission, pursuant to the dispute resolution process as set forth in the Interconnection Agreement. In the event that BellSouth prevails, BellSouth may convert such

Attachment 2

Page 23

combinations of loop and transport network elements to special access services and may seek appropriate retroactive reimbursement from ITC^DeltaCom.

- 8.3.5.4 ITC^DeltaCom may convert special access circuits to combinations of loop and transport UNEs pursuant to the terms of this Section and subject to the termination provisions in the applicable special access tariffs, if any.

8.3.6 Rates

8.3.6.1 Georgia

- 8.3.6.2 The non-recurring and recurring rates for the EEL Combinations of network elements set forth in 8.3.4 whether Currently Combined or new, are as set forth in Attachment 11.

- 8.3.6.3 On an interim basis, for combinations of loop and transport network elements not set forth in Section 8.3.4, where the elements are not Currently Combined but are ordinarily combined in BellSouth's network, the non-recurring and recurring charges for such UNE combinations shall be the sum of the stand-alone non-recurring and recurring charges of the network elements which make up the combination. These interim rates shall be subject to true-up based on the Commission's review of BellSouth's cost studies.

- 8.3.6.4 To the extent that ITC^DeltaCom seeks to obtain other combinations of network elements that BellSouth ordinarily combines in its network which have not been specifically priced by the Commission when purchased in combined form, ITC^DeltaCom, at its option, can request that such rates be determined pursuant to the Bona Fide Request/New Business Request (NBR) process set forth in this Agreement.

8.3.6.5 All Other States

- 8.3.6.5.1 Subject to Section 8.3.2 and 8.3.3 preceding, for all other states, the non-recurring and recurring rates for the Currently Combined EEL combinations set forth in Section 8.3.4 and other Currently Combined network elements will be the sum of the recurring rates for the individual network elements plus a non recurring charge set forth in Attachment 11.

8.3.6.6 Multiplexing

- 8.3.6.6.1 Where multiplexing functionality is required in connection with loop and transport combinations, such multiplexing will be provided at the rates and on the terms set forth in this Agreement.

8.4 Other Network Element Combinations

Tennessee

Federal Communications Commission

FCC 00-183

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|---------------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Implementation of the |) | |
| Local Competition Provisions |) | CC Docket No. 96-98 |
| Of the Telecommunications Act of 1996 |) | |
| |) | |
| |) | |
| |) | |
| |) | |

SUPPLEMENTAL ORDER CLARIFICATION

Adopted: May 19, 2000

Released: June 2, 2000

By the Commission: Chairman Kennard and Commissioner Ness issuing separate statements;
Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. On November 5, 1999, we released the *Third Report and Order and Fourth Further Notice of Proposed Rulemaking* in this docket responding to the U.S. Supreme Court's January 1999 decision that directed us to reevaluate the unbundling obligations of section 251 of the Telecommunications Act of 1996 (1996 Act).¹ On November 24, 1999, we released a *Supplemental Order* that modified the *Third Report and Order and Fourth FNPRM* with regard to the ability of requesting carriers to use combinations of unbundled network elements to provide local exchange and exchange access service prior to our resolution of the *Fourth FNPRM*.² In this Order, we take three actions to extend and clarify the temporary constraint that we adopted in the *Supplemental Order*. First, we extend the temporary constraint identified in the *Supplemental Order* while we compile an adequate record for addressing the legal and policy disputes presented here. Second, we clarify what constitutes a "significant amount of local exchange service." Third, we clarify that incumbent local exchange carriers (LECs) must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled network elements, and we allow incumbent LECs to subsequently conduct limited audits by an independent third party to verify the carrier's

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 1 (1999) (citing *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999)) (*Third Report and Order and Fourth FNPRM*).

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999) (*Supplemental Order*).

Federal Communications Commission

FCC 00-183

completing) the customer's local usage," or (c) the carrier certifies that the special access arrangements are used for the completion of local calls, or (d) the special access arrangements are used to provide data services.⁷⁶ It also argues that incumbent LECs that provide interexchange services in a certain market must make unbundled loop-transport combinations available to requesting carriers in that market regardless of whether the requesting carrier is providing any local exchange service to the end user.⁷⁷ We reject these proposals because they offer no way to verify whether a requesting carrier is providing any specified amount of local service. In addition, its proposal to allow unconstrained use of unbundled loop-transport combinations in markets in which the incumbent LEC provides interexchange service does not allow us to preserve the status quo while we consider the issues in the *Fourth FNPRM*. Instead, the three options described above provide a reasonable threshold for determining whether a carrier has taken affirmative steps to provide local service. They are also verifiable for both the requesting carrier and the incumbent LEC and prevent parties from gaming implementation of the interim requirements. While CompTel expresses a concern about incumbent LECs being both an input supplier and a retail competitor in the interexchange market, the temporary constraint, as we explain above, should not allow incumbent LECs that provide in-region long distance service to engage in anticompetitive behavior.⁷⁸

28. We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above.⁷⁹ We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXC's solely or primarily to bypass special access services. We emphasize that the co-mingling determinations that we make in this order do not prejudice any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001.

29. We clarify that incumbent LECs must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled network elements.⁸⁰ We do not believe it is necessary to address the precise form that

⁷⁶ With regard to data services, we note that the local usage options we adopt do not preclude a requesting carrier from providing data over circuits that it seeks to convert, as long as it meets the thresholds contained in the options.

⁷⁷ Letter from Jonathan D. Lee, Vice President, Regulatory Affairs, CompTel, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98 (filed Apr. 27, 2000) (*CompTel Apr. 27, 2000 Letter*). Sprint supports CompTel's proposal except for the requirement that incumbent LECs that provide interexchange services in a certain market make unbundled loop-transport combinations available to requesting carriers in that market regardless of whether the requesting carrier is providing any local exchange service to the end user. Letter from Richard Juhnke, General Attorney, Sprint, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98, at 1 (filed May 2, 2000).

⁷⁸ *CompTel Apr. 27, 2000 Letter* at 2.

⁷⁹ See *MCI WorldCom Apr. 4, 2000 Letter* at 6-8; *February 28, 2000 Joint Letter* at 2.

⁸⁰ See *Supplemental Order* at n.9.

Federal Communications Commission

FCC 00-183

such a certification must take, but we agree with ALTS that a letter sent to the incumbent LEC by a requesting carrier is a practical method of certification.⁴¹ The letter should indicate under what local usage option the requesting carrier seeks to qualify. In order to confirm reasonable compliance with the local usage requirements in this Order, we also find that incumbent LECs may conduct limited audits only to the extent reasonably necessary to determine a requesting carrier's compliance with the local usage options. We stated in the *Supplemental Order* that we did not believe it was necessary to allow auditing because the temporary constraint on combinations of unbundled loop and transport network elements was so limited in duration.⁴² Because we are extending the temporary constraint, we find that it is reasonable to allow the incumbent LECs to conduct limited audits.

30. We agree with ALTS that once a requesting carrier certifies that it is providing a significant amount of local exchange service, the process by which special access circuits are converted to unbundled loop-transport combinations should be simple and accomplished without delay.⁴³ We stated in the *Third Report and Order* that incumbent LECs and requesting carriers have developed routine provisioning procedures that can be used to deploy unbundled loop-transport combinations using the Access Service Request process, a process that carriers have used historically to provision access circuits.⁴⁴ Under this process, the conversion should not require the special access circuit to be disconnected and re-connected because only the billing information or other administrative information associated with the circuit will change when a conversion is requested. We continue to believe that the Access Service Request process will allow requesting carriers to avoid material provisioning delays and unnecessary costs to integrate unbundled loop-transport combinations into their networks, and expect that carriers will use this process for conversions.

31. We agree with MCI WorldCom that upon receiving a conversion request that indicates that the circuits involved meet one of the three thresholds for significant local usage that the incumbent LEC should immediately process the conversion.⁴⁵ We emphasize that incumbent LECs may not require a requesting carrier to submit to an audit prior to provisioning combinations of unbundled loop and transport network elements.⁴⁶ There is broad agreement

⁴¹ See *ALTS March 24, 2000 Letter* at 13.

⁴² See *Supplemental Order* at n.9

⁴³ *ALTS March 24, 2000 Letter* at 13.

⁴⁴ See *Third Report and Order*, 15 FCC Rcd at 3831, para. 298, n.581. ALTS states that the Access Service Request process has been adopted by industry consensus in New York. *ALTS March 24, 2000 Letter* at 13.

⁴⁵ *MCI WorldCom Apr. 4, 2000 Letter* at 9.

⁴⁶ The incumbent LEC and competitive LEC signatories to the *February 28, 2000 Joint Letter* state that audits will not be routine practice, but will only be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange service. *February 28, 2000 Joint Letter* at 3. We agree that this should be the only time that an incumbent LEC should request an audit.

Federal Communications Commission

FCC 00-183

among the incumbent LECs and the competitive LECs on auditing procedures. In particular, parties agree that incumbent LECs requesting an audit should hire and pay for an independent auditor to perform the audit, and that the competitive LEC should reimburse the incumbent if the audit uncovers non-compliance with the local usage options.⁸⁷ In order to reduce the burden on requesting carriers, we find that incumbent LECs must provide at least 30 days written notice to a carrier that has purchased a combination of unbundled loop and transport network elements that it will conduct an audit, and may not conduct more than one audit of the carrier in any calendar year unless an audit finds non-compliance. We agree with Bell Atlantic that at the same time that an incumbent LEC provides notice of an audit to the affected carrier, it should send a copy of the notice to the Commission.⁸⁸ While the Commission will not take action to approve or disapprove every audit, the notices will allow us to monitor implementation of the interim requirements.

32. We expect that requesting carriers will maintain appropriate records that they can rely upon to support their local usage certification. For example, US West points out that records that demonstrate that a requesting carrier's unbundled loop-transport combination is configured to provide local exchange service should be adequate to support the carrier's certification without the need for extensive call detail records.⁸⁹ We emphasize that an audit should not impose an undue financial burden on smaller requesting carriers that may not keep extensive records, and find that, in the event of an audit, the incumbent LEC should verify compliance for these carriers using the records that the carriers keep in the normal course of business. We will not require specifically that incumbent LECs and requesting carriers follow the other auditing guidelines contained in the *February 28, 2000 Joint Letter*. As the parties indicate, in many cases, their interconnection agreements already contain audit rights.⁹⁰ We do not believe that we should restrict parties from relying on these agreements.

33. We note that the requirements in this order will take effect immediately upon publication in the Federal Register. We find good cause for doing so because they will allow incumbent LECs to promptly process requests from requesting carriers for access to unbundled loop-transport combinations, and provide the industry with more clearly defined standards for using combinations during the interim period prior to our resolution of the *Fourth FNPRM*.

⁸⁷ See, e.g., *February 28, 2000 Joint Letter* at 3; *ALTS March 24, 2000 Letter* at 12; *MCI WorldCom Apr. 4, 2000 Letter* at 10.

⁸⁸ *Bell Atlantic Apr. 11, 2000 Letter* at 3.

⁸⁹ *US West Apr. 13, 2000 Letter* at 1.

⁹⁰ *February 28, 2000 Joint Letter* at 3.

CONFIDENTIAL

ITC  DELTACOM®Customer Care Center  1-800-239-3000

EXCLUSIVE LOCAL SERVICE PROVIDER AGREEMENT

Customer Name Construction Partners Limited OFF Packet # _____
City Nashville State TN Zip _____
Contact Name Mike Elmore Title _____
Telephone 334.272.8200
Fax _____

I select ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") to be my exclusive provider of local service and understand that the services provided at the rates set forth herein are based on ITC^DeltaCom serving as the exclusive provider of my local service and that additional charges/fees will apply if ITC^DeltaCom is no longer the exclusive provider of local service.

BTN #: 615/333-2500BTN # 615/333-8624

BTN # _____

BTN # _____

BTN # _____

BTN # _____

Authorized Customer Signature Mike ElmorePrint Name Mike Elmore

Title _____

Date 11/26/02

REV 05/02 OPSLSP